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NOTES.

EFFECT OF CHANGE OF DOMICIL UPON AFTER-ACQUIRED MARITAL PROPERTY.—Marriage necessarily affects the relations of the parties with regard to their respective property interests, whether the parties regulate such interests specifically by means of ante-nuptial contract, or, by remaining passive, allow them to be determined, not by virtue of the marriage contract, but by force of positive law incidental to the status created thereby.[1] In the latter event, it is well settled that where there is no subsequent change of domicil, the law of the matrimonial domicil controls as to all property within the jurisdiction,[2] and as to all personal property wherever held.[3] The same law applies

[1]Lawrence *v.* Miller (N. Y. 1848) 1 Sandf. S. C. R. 516; Castro *v.* Illies (1858) 22 Tex. 479; *cf.* Marshall *v.* Sherman (1895) 148 N. Y. 9.

[2]Story, Conflict of Laws (8th ed.) § 186.

[3]Harral *v.* Harral (1884) 39 N. J. Eq. 279; Story, Conflict of Laws § 158.

to after-acquired property within the jurisdiction.[4] As to real property held without the jurisdiction of the matrimonial domicil, the *lex rei sitæ governs,*[5] and no right therein will be created by mere operation of law.[6] Even a contract with reference to land so situated will, at most, confer a right of action to be enforced according to the *lex rei sitæ.*[7]

Where the parties adopt a new domicil, however, a more difficult question is presented. May the law of the matrimonial domicil forever determine the property rights of the parties, so as to affect property acquired after a change of domicil? Where the parties have entered into express contractual relations, having in mind a definite or a possible change of domicil, the resulting obligations would undoubtedly attach to property acquired after such a change.[8] It is doubtful, however, whether the same effect would be given to a contract made without reference to a subsequent change of domicil,[9] although it would seem supportable on the theory that the obligation is a personal one, and attaches wherever the parties may go.[10] But in the absence of express contract, there is neither intention with respect to a change of domicil manifested, nor can such intention be inferred from the marriage contract.[11] Nor does a personal obligation attach to the parties, effective beyond the extent of the law by operation of which it is created.[12] An opposite result has been reached in England,[13] where the court gave effect to the article of the French Code providing that in the absence of express ante-nuptial contract the parties should be in the position of having made an express contract to be governed by the law of community, and refused to distinguish between an express contract and one arising by operation of law. In so holding, it would seem that direct effect was given to the law of France upon English property, and not to principles of private international law as affecting contract,[14] for, whatever the provisions of the French Code, no express contract was actually created, but at most, one in effect, and in effect only by force of the positive law creating it. But the parties by leaving France, have relinquished that law and submitted themselves to

[4]Story, Conflict of Laws §§ 159, 187; Newcomer *v.* Orem (1852) 2 Md. 297.

[5]Welch *v.* Tennent L. R. [1891] A. C. 639; Westlake, Private Intern. Law (4th ed.) 101.

[6]Story, Conflict of Laws § 448; Vertner *v.* Humphreys (Miss. 1850) 14 Sm. & M. 130.

[7]LeBreton *v.* Miles (N. Y. 1840) 8 Paige 261; Richardson *v.* De Giverville (1891) 107 Mo. 422; Story, Conflict of Laws § 184.

[8]Decouche *v.* Savetier (N. Y. 1817) 3 Johns Ch. 190; DeBarante *v.* Gott (N. Y. 1849) 6 Barb. 492.

[9]Castro *v.* Illies *supra;* Besse *v.* Pellochoux (1874) 73 Ill. 285; Long *v.* Hess (1895) 154 Ill. 482.

[10]Decouche *v.* Savetier *supra;* Scheferling *v.* Huffman (1854) 4 Oh. St. 241; DePierres *v.* Thorn (N. Y. 1859) 4 Bosw. 266; Story, Conflict of Laws § 184.

[11]2 Bishop, Married Women § 569.

[12]Saul *v.* His Creditors (La. 1827) 5 Mart. [N. s.] 569; Muus *v.* Muus (1882) 29 Minn. 115; Gambier *v.* Gambier (1835) 7 Sim. 262. See Estate of Baubichon (1874) 49 Cal. 18.

[13]DeNicols *v.* Curlier L. R. [1900] A. C. 21. As affecting immovables, see also De Nicols *v.* Curlier L. R. [1900] 2 Ch. 410.

[14]Saul *v.* His Creditors *supra;* Besse *v.* Pellochoux *supra.*

the law of a new domicil.[15] There would seem to be no more reason for recognizing a right of community so arising than one of dower which is substantially a similar right, and depending upon the particular municipal law.[16] It would seem that the incidents arising from the marital relation with respect to property rights would thenceforth be governed by the law of the actual domicil, and not affected by the law of the matrimonial domicile.[17] And this would, it is submitted, be destructive of the alleged partnership relation arising by tacit contract.[18] Assuming that the parties made a tacit contract to be bound by the law of community, being presumed to know the provisions of the law in that respect, it must likewise be presumed that the parties knew the territorial limitations of such provisions as well. In a recent case, *In re Majot's Estate* (N. Y. 1909) 119 N. Y. Supp. 888, the court refused to hold that rights as to property acquired in New York after a change of domicil, could be affected by virtue of the articles of the French Code prescribing community of property, so as to relieve the surviving spouse from the tax on property devolving under the intestate laws of the state. The decision although emphasizing the inadvisability of allowing foreign law to nullify the tax laws of New York, is clearly in accord with the principles evolved in the cases setting forth the American, and, it is submitted, the sounder law.

It may be contended, however, that the wife having acquired a vested right in the community property before leaving France, would be unaffected by the change of domicil. In general, property rights acquired by the parties previous to a change of domicil are unaffected thereby,[19] and so in *Bonati* v. *Welsch*,[20] an obligation fixed on the husband in France, in favor of his wife, was undisturbed by the acquisition of a domicil by the husband in New York, and attached to property acquired by him in that state, to the extent of the obligation. And the general rule applies where both parties voluntarily adopt a new domicil,[21] although in such a case it would seem arguable that the parties mutually relinquished their rights in submission to the laws of the new domicil.[22] But, adopting the general view, that no such result occurs, it would seem that in the principal case, the wife, assuming that by the law of France she had a vested right in the community property there owned,[23] would continue to have such right with respect to property brought by the couple to New York. And the logical result would be that property acquired in that state by virtue of the community property, would be impressed with such community in the wife's favor.[24] It is submitted, however, that the extent of the wife's right would be limited by the extent of her original vested right.

[15]Castro *v.* Illies *supra;* Gale *v.* Davis' Heirs (La. 1817) 4 Mart. 645.

[16]Lawrence *v.* Miller *supra.*

[17]Story, Conflict of Laws § 448; Wharton, Conflict of Laws § 196.

[18]*Cf.* De Nichols *v.* Curlier *supra.*

[19]Parrott *v.* Nimmo (1873) 28 Ark. 351; Doss *v.* Campbell (1851) 19 Ala. 590; Lyon *v.* Knott (1853) 26 Miss. 548.

[20](1861) 24 N. Y. 157.

[21]DePas *v.* Mayo (1848) 11 Mo. 314; Kendall *v.* Coons (Ky. 1866) 1 Bush 530.

[22]Fuss *v.* Fuss (1869) 24 Wis. 256.

[23]French Code §§ 1401, 1421, 1422, 1423, 1428, 1474. See DeNicols *v.* Curlier *supra.*

[24]DePass *v.* Mayo *supra.*